



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 23, 2018

PUBLIC ACCESS OPINION 18-001
(Request for Review 2017 PAC 49999)

FREEDOM OF INFORMATION ACT:
Disclosure of Information in Village
President's Resignation Letter

Ms. Judith Valente
Senior Correspondent
WGLT Radio
Campus Box 8910
Illinois State University
Normal, Illinois 61790

Ms. Sara Hill
FOIA Officer
Village of Hudson
P.O. Box 221
109 Front Street
Hudson, Illinois 61748

Dear Ms. Valente and Ms. Hill:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)). For the reasons discussed below, this office concludes that the Village of Hudson (Village) violated the requirements of FOIA by improperly redacting information from an e-mail provided in response to Ms. Judith Valente's October 4, 2017, FOIA request.

Ms. Judith Valente
Ms. Sara Hill
January 23, 2018
Page 2

BACKGROUND

On October 4, 2017, Ms. Valente, on behalf of WGLT Radio, submitted a FOIA request to the Village seeking "an unredacted copy of the resignation letter handed in by former Village President Jason Collins."¹ On October 6, 2017, the Village provided Ms. Valente with a copy of the requested record but redacted one portion, citing section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f) (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017).²

On October 9, 2017, Ms. Valente contacted the Attorney General's Public Access Bureau in order to file a Request for Review. Ms. Valente's initial correspondence did not include a copy of her FOIA request.³ On October 10, 2017, Ms. Valente submitted the outstanding information necessary to file this Request for Review and contested the Village's redaction of the responsive record.⁴ On October 12, 2017, this office sent a copy of the Request for Review to the Village and asked it to provide an unredacted copy of the record furnished to Ms. Valente, together with a detailed explanation of the factual and legal bases for the asserted exemption.⁵ On October 20, 2017, the Village submitted a written response to the Request for Review and furnished this office with an unredacted copy of the responsive record.⁶ In its written response, the Village asserted that the redacted information was exempt from disclosure under both section 7(1)(n) (5 ILCS 140/7(1)(n) (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017), and section 7(1)(f) of FOIA.⁷ On October 24, 2017, the Public Access Bureau forwarded a copy of the Village's

¹Letter from Judith (Judy) Valente to [Allison] Brutlag (October 4, 2017).

²Letter from Sarah Hill, FOIA Officer, Village of Hudson, to Judith Valente, WGLT Radio (October 6, 2017).

³E-mail from the Public Access [Bureau], [Office of the Attorney General], to Judith Valente (October 10, 2017).

⁴E-mail from Judith Valente, Senior Correspondent, GLT Radio, to Public Access Counselor, [Office of the Attorney General] (October 9, 2017); E-mail from Judith Valente, Senior Correspondent, GLT Radio, to Public Access [Bureau, Office of the Attorney General] (October 10, 2017).

⁵Letter from Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Sara[] Hill, FOIA Officer, Village of Hudson (October 12, 2017).

⁶E-mail from Sara Hill to Public Access Counsel (October 20, 2017).

⁷E-mail from Sara Hill to Public Access Counsel (October 20, 2017).

Ms. Judith Valente
Ms. Sara Hill
January 23, 2018
Page 3

response to Ms. Valente.⁸ She did not reply. On December 7, 2017, this office extended the time within which to issue a binding opinion by 30 business days, to January 24, 2018, pursuant to section 9.5(f) of FOIA.⁹

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2016). "All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2016). "To meet this burden, the public body must provide a detailed justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversarial testing." *Peoria Journal Star v. City of Peoria*, 2016 IL App (3d) 140838, ¶12, 52 N.E.3d 711, 713-14 (2016). Further, the exemptions from disclosure contained in section 7 of FOIA (5 ILCS 140/7 (West 2016), as amended by Public Acts 100-026, effective August 4, 2017; 100-201, effective August 18, 2017) are to be narrowly construed. *See Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

The record at issue is a one-page e-mail, dated May 3, 2017, from Jason Collins, the former President of the Village, to the Village Trustees and the Village Clerk at their Village e-mail addresses. In his e-mail, Mr. Collins wrote that he had "decided * * * to resign as Village President."¹⁰ In the paragraph following that statement, the Village redacted approximately three lines of text (a portion of one sentence) prior to furnishing a copy of the e-mail to Ms. Valente.

In its written response to this office, the Village explained:

We propose that the redacted information is exempt from disclosure in that it relates to a public body's adjudication of employee grievances and is thus exempt under subsection (n) of Section 7 of the Illinois FOIA. Additionally, we propose that it is a record in which an opinion is expressed that is not the final

⁸Letter from Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Judith Valente, Senior Correspondent, WGLT Radio (October 24, 2017).

⁹Letter from Leah Bartelt, Assistance Attorney General, Public Access Bureau, Office of the Attorney General, to Judith Valente, Senior Correspondent, WGLT Radio, and Sara Hill, FOIA Officer, Village of Hudson (December 7, 2017).

¹⁰E-mail from Jason Collins to Betty Scanlon, Phil Morris, Pat O'Grady, Allison Brutlag, Caleb Post, Alan Meissner, and Kerry Tudor (May 3, 2017).

Ms. Judith Valente
Ms. Sara Hill
January 23, 2018
Page 4

policy of the Village of Hudson and is thus exempt under subsection (f) of Section 7 of the Illinois FOIA. If you have any further questions, we would refer you to Village Attorney Trygve Meade[.]^[11]

Section 7(1)(f) of FOIA

Section 7(1)(f) exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." The section 7(1)(f) exemption applies to "inter- and intra-agency predecisional and deliberative material," *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247 (1st Dist. 2003). Based on the deliberative process exemption in Federal FOIA,¹² section 7(1)(f) is "intended to protect the communications process and encourage frank and open discussion among agency employees before a final decision is made." *Harwood*, 344 Ill. App. 3d at 248.

Given the purpose of section 7(1)(f), its protections extend only to "the opinions that public officials form *while creating government policy*. It does not protect factual material or final agency decisions." (Emphasis added.) *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, ¶24, 7 N.E.3d 741, 747-48 (2014). "Thus, in order to qualify for the privilege, a document must be both predecisional in the sense that it is actually [a]ntecedent to the adoption of an agency policy, and deliberative in the sense that * * * it is 'actually * * * related to the process by which policies are formulated.'" (Omission in original.) *Dumke v. City of Chicago*, 2013 IL App (1st) 121668, ¶14, 994 N.E.2d 573, 578-79 (2013) (citing *Enviro Tech International, Inc. v. United States Environmental Protection Agency*, 371 F.3d 370, 374-75 (7th Cir. 2004)); see also *Kalven*, 2014 IL App (1st) 121846, ¶24, 7 N.E.3d (quoting *Public Citizen, Inc. v. Office of Management & Budget*, 598 F.3d 865, 876 (D.C. Cir. 2010) (holding that section 7(1)(f) extends only to materials that "reflect the give and take of the deliberative process[.]"); *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 868 (D.C. Cir 1980) (a public body that asserts the deliberative process exemption "has the burden of establishing what deliberative process is involved, and the role played by the documents in issue in the course of that process.").

¹¹E-mail from Sara Hill to Public Access Counsel (October 20, 2017).

¹²Exemption 5 of Federal FOIA (5 U.S.C. § 552(b)(5) (2012)) applies to "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency[.]"

Ms. Judith Valente
Ms. Sara Hill
January 23, 2018
Page 5

In its response to this office, the Village argued that the redacted material is exempt from disclosure pursuant to section 7(1)(f) because "it is a record in which an opinion is expressed that is not the final policy of the Village of Hudson[.]"¹³ This office has reviewed the unredacted copy of the record furnished by the Village. Although the redacted portion of Mr. Collins' e-mail may reflect his opinion concerning the circumstances behind his decision to resign, that opinion was not expressed as part of a deliberative or decision-making process. Rather, as explained above, Mr. Collins sent the e-mail to announce his resignation. The e-mail represents his final decision about his tenure as Village President. A communication that reflects a final decision is not part of a predecisional, deliberative process. *State Journal-Register v. University of Illinois Springfield*, 2013 IL App (4th) 120881, ¶31, 994 N.E.2d 705, 714 (2013).

Mr. Collins' e-mail also was not part of the "give-and-take of the deliberative process" concerning a policy matter. Instead, it was a single communication which announced and explained his resignation and, in doing so, included his comments on the conduct of Village business. As stated above, a public body that withholds or redacts information pursuant to one of the FOIA exemptions has the burden of providing "a detailed justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversarial testing." *Peoria Journal Star*, 2016 IL App (3d) 140838, ¶12, 52 N.E.3d at 713-14. Based on the specific facts of this e-mail, this office concludes that the Village has not sustained its burden of demonstrating that the lines redacted from Mr. Collins' resignation e-mail are exempt from disclosure pursuant to section 7(1)(f) of FOIA.

Section 7(1)(n) of FOIA

The Village also asserted that the redacted section of the e-mail could be withheld pursuant to section 7(1)(n), which exempts from disclosure "[r]ecords relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed." The Illinois Appellate Court has construed an "adjudication" for purposes of section 7(1)(n) as a "formalized legal process that results in a final and enforceable decision." *Kalven*, 2014 IL App. (1st) 121846, ¶13, 7 N.E.3d at 745. Further, the court emphasized that "[t]he phrase 'related to' must be read narrowly," and held that the scope of section 7(1)(n) is limited to records generated during an adjudication, and does not encompass records of any underlying investigation that may have preceded the adjudication. *Kalven*, 2014 IL App. (1st) 121846, ¶22, 7 N.E.3d at 747; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 13-011, issued June 11, 2013, at 8 (distinguishing adjudicatory records that are exempt from disclosure under section 7(1)(n) from investigatory records that are not).

¹³E-mail from Sara Hill to Public Access Counsel (October 20, 2017).

Ms. Judith Valente
Ms. Sara Hill
January 23, 2018
Page 6

In arguing that the redacted information relates to the Village's adjudication of employee grievances, the Village has not identified an ongoing or contemplated grievance, complaint, or disciplinary action that was or would be adjudicated. Based on our confidential review of the unredacted record provided by the Village, the record in question does not appear to have been generated during any formalized legal proceeding that could be considered an "adjudication." The e-mail does not refer to any formal proceedings related to employee grievances. The text of the e-mail indicates that it was created and sent for the purpose of effecting Mr. Collins' resignation and explaining his reasons for that resignation. Accordingly, this office concludes that the Village has not sustained its burden of demonstrating by clear and convincing evidence that the redacted information is exempt from disclosure under section 7(1)(n) of FOIA.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the available information, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On October 4, 2017, Ms. Judith Valente, on behalf of WGLT Radio, submitted a FOIA request to the Village of Hudson seeking "an unredacted copy of the resignation letter handed in by former Village President Jason Collins."

2) On October 6, 2017, the Village provided Ms. Valente with a copy of Mr. Collins' resignation e-mail but redacted several lines of text in the e-mail pursuant to section 7(1)(f) of FOIA.

3) On October 10, 2017, Ms. Valente submitted all of the materials required for this Request for Review and contested the Village's redaction of the responsive e-mail. The Request for Review was timely filed and otherwise complies with section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2016)).

4) On October 12, 2017, the Public Access Bureau sent a copy of the Request for Review to the Village and asked it to provide for this office's confidential review an unredacted copy of the e-mail furnished to Ms. Valente, together with a written response to Ms. Valente's allegation, including the factual and legal bases for the assertion of section 7(1)(f) of FOIA with respect to the redacted portions of the e-mail.

5) On October 20, 2017, the Village responded, providing an unredacted copy of the e-mail responsive to the request, and asserting that the redacted section of the e-mail is exempt from disclosure pursuant to sections 7(1)(f) and 7(1)(n) of FOIA.

Ms. Judith Valente
Ms. Sara Hill
January 23, 2018
Page 7

6) On October 24, 2017, the Public Access Bureau forwarded a copy of the Village's written response to Ms. Valente. She did not reply to that response.

7) On December 7, 2017, this office extended the time within which to issue a binding opinion by 30 business days, to January 24, 2018, pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

8) Section 7(1)(f) of FOIA exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated[.]" In order to fall within the scope of section 7(1)(f), a document must be both predecisional and deliberative, in that it must be actually related to the process by which a public body formulates action.

9) Although the redacted information may be characterized as an opinion of the former Village President concerning the circumstances related to his resignation, there is no basis in the e-mail or in any other information available to this office to conclude that the statement was made in the context of a predecisional, deliberative process. The e-mail expresses the President's decision to resign and conveys that decision to other elected Village officials. Consequently, this office concludes that the Village has not met its burden of demonstrating that the redacted information is exempt from disclosure pursuant to section 7(1)(f) of FOIA.

10) Section 7(1)(n) of FOIA exempts from disclosure "[r]ecords relating to a public body's adjudication of employee grievances or disciplinary cases[.]" The Illinois Appellate Court has construed "adjudication" for purposes of section 7(1)(n) as a "formalized legal process that results in a final and enforceable decision."

11) The information provided by the Village does not indicate that the President's resignation related to an ongoing adjudication of employee grievances. Accordingly, this office concludes that the Village has not met its burden of demonstrating that the redacted information is exempt from disclosure pursuant to section 7(1)(n) of FOIA.

Therefore, it is the opinion of the Attorney General that the Village's response to Ms. Valente's Freedom of Information Act request violated the requirements of FOIA. Accordingly, the Village is directed to take immediate and appropriate action to comply with this opinion by disclosing to Ms. Valente an unredacted copy of Mr. Collins' May 3, 2017, resignation e-mail.

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2016). An aggrieved party may obtain judicial review of the decision by filing a

Ms. Judith Valente
Ms. Sara Hill
January 23, 2018
Page 8

complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Ms. Judith Valente as defendants. *See* 5 ILCS 140/11.5 (West 2016).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General

cc: Mr. Trygve Meade
Village Attorney
Meade Law Office, P.C.
3106 North Main Street
Canton, Illinois 61520

CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 18-001) upon:

Ms. Judith Valente
Senior Correspondent
WGLT Radio
Campus Box 8910
Illinois State University
Normal, Illinois 61790
javalen@ilstu.edu

Ms. Sara Hill
FOIA Officer
Village of Hudson
P.O. Box 221
109 Front Street
Hudson, Illinois 61748
sara.hill@hudsonil.org

Mr. Trygve Meade
Village Attorney
Meade Law Office, P.C.
3106 North Main Street
Canton, Illinois 61520
trygve@meadelawpc.com

by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on January 23, 2018.


SARAH L. PRATT
Public Access Counselor

SARAH L. PRATT
Public Access Counselor
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62701
(217) 557-0548